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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

NATHAN KEVIN TURNER, Plaintiff, v. BONNIE DUMANIS, DISTRICT ATTORNEY OF THE COUNTY OF SAN DIEGO; SAN DIEGO POLICE DEPT.; DETECTIVE A. FRAGOSO OF THE SAN DIEGO COUNTY POLICE DEPT.; DETECTIVE J. DREIS OF THE SAN DIEGO COUNTY POLICE DEPT.; SAN DIEGO CRIME LAB AND THE ATTORNEY GENERAL OF THE STATE OF CALIF., Defendants.	Case No. 08CV360 W (RBB) **DEFENDANTS DETECTIVE J. DREIS AND THE SAN DIEGO POLICE DEPARTMENTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION TO DISMISS PLAINTIFF'S COMPLAINT** **[FRCP RULE 12(b)(6)]** **[NO ORAL ARGUMENT PURSUANT TO LOCAL RULE 7.1]** Date: July 14, 2008 Time: 10:30 a.m. Courtroom: 7 Judge: Hon. Thomas J. Whelan

I.

INTRODUCTION

Plaintiff is currently serving a term of 174 years and 4 months in prison. (Complaint ¶ 15). This prison term follows his conviction of charges including peeping, burglary, rape and robbery with a deadly weapon. (*Id.*) Plaintiff's trial commenced on January 11, 1982. (Complaint ¶ 22). Plaintiff was convicted on March 22, 1982. (Complaint ¶ 25). Following his conviction at trial, Plaintiff has unsuccessfully pursued the reversal of his conviction through the appeals process since 1983. (Complaint ¶ 24). Plaintiff lost his "direct appeal" of his conviction on August 26,

1983. (Complaint ¶ 25). Since that time, Plaintiff has filed numerous appeals and *habeas corpus* actions in both state and federal court. (Complaint ¶¶ 27-57).

Subsequent to his conviction, "an order to destroy or release trial exhibits was issued by the Superior Court on August 6, 1987." (Complaint ¶ 25). This order was sent to Plaintiff's trial attorney, E. Hodge Crabtree III. (*Id.*) Plaintiff alleges that the "evidence in the trial Court's possession was destroyed or otherwise disposed of in February 22, 1987[1]." (*Id.*)

There were eighteen victims involved in the crimes Plaintiff was convicted of. (Complaint ¶ 23). During trial of these charges, Plaintiff maintained his innocence. (Complaint ¶ 16). Plaintiff believes that the DNA samples taken from the victims may be able to exonerate him of the crimes he was found to have committed. (Complaint ¶ 17). However, these DNA samples no longer exist as they were destroyed pursuant to an order of the Superior Court.

Plaintiff now brings this 42 U.S.C. § 1983 ("Section 1983") suit against seemingly everyone who was involved in his criminal trial, including the police detectives involved in his arrest. Plaintiff attempts to assert a claim for relief based on an alleged civil rights violation against all of these defendants for the destruction of the DNA evidence. As will be shown, as to these moving defendants, the San Diego Police Department and Detective J. Dreis[2], Plaintiff's Section 1983 claim is not viable and should be dismissed.

II.

LEGAL ARGUMENT

A. Legal Standard of Review

Federal Rule of Civil Procedure Rule 12(b)(6) ("Rule 12(b)(6)") provides that a complaint may be dismissed for failure to state a claim upon which relief can be granted. A Rule 12(b)(6) motion to dismiss tests the sufficiency of the complaint. (*Ilets v. Glock, Inc.*, 349 F.3d 1191, 1199-1200 (9th Cir. 2003)). Generally, a complaint may be dismissed as a matter of law for two reasons: (1) lack of cognizable legal theory, or (2) insufficient facts under a cognizable theory. (*Navarro v. Block*, 250 F.3d 729-732 (9th Cir. 2001)). Rule 12(b)(6) also "authorizes a court to dismiss a claim on the basis of a dispositive issue of law." (*Neitzke v. Williams*, 490 U.S. 319, 326 (1989); *see also, Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995), "[a] dismissal for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) is a ruling on a question of law . . . .") For purposes of a motion to dismiss, well-pleaded factual allegations of the complaint are generally presumed to be true. (*California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 515 (1972)). However, conclusions of law or unwarranted deductions of fact or arguments are not sufficient to state a claim. (*Frederiksen v. Poloway*, 637 F.2d 1147, 1150 n.1 (7th Cir. 1981), *cert. denied*, 451 U.S. 1017).

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[1] This date is ***prior*** to the date of the order of the Superior Court. At this time, this answering defendant has no indication whether or not the dates are accurate, but rather, only recite the dates as alleged in Plaintiff's Complaint for purposes of this motion.

[2] Defendant Detective A. Fragoso is retired from employment with the City of San Diego. Accordingly, these answering defendants have no information indicating that service of process of the Summons and Complaint have been effectuated upon Defendant Detective A. Fragoso and enter an appearance only on behalf of retired Detective J. Dreis and the San Diego Police Department.

As will be shown below, Plaintiff's purported claim for relief against the San Diego Police Department fails because it is not a "person" for purposes of a Section 1983 claim for relief and the claim for relief against Detective J. Dreis fails as insufficient facts have been pled under a cognizable theory. Thus, all causes of action against these defendants should be dismissed.

B. Plaintiff's Complaint Does Not Comply with Federal Rules of Civil Procedure Rule 8

Plaintiff's Complaint is captioned as a "Complaint Under 42 U.S.C. Section 1983." However, it should be initially noted that Plaintiff's Complaint does not comply with Fed. Rules of Civ. Proc. Rule 8, which states in pertinent part:

> A pleading that states a claim for relief must contain:
>
> (1) a short and plain statement of the grounds for the court's jurisdiction, unless the court already has jurisdiction and the claim needs no new jurisdictional support;
>
> (2) a short and plain statement of the claim showing that the pleader is entitled to relief; and
>
> (3) a demand for the relief sought, which may include relief in the alternative or different types of relief.

Plaintiff's Complaint contains none of the required elements for a claim for relief. Specifically, while the Complaint recounts Plaintiff's personal journey through the American justice system with some particularity, the Complaint lacks a short and plain statement of the claim showing that Plaintiff is entitled to relief as to these defendants.

Defendant Detective J. Dreis is identified as a party in paragraph 13 of the complaint and his association with this matter is that he "collected crime scene evidence and stored it." (Complaint ¶ 13). Thereafter, in the 26 page Complaint, Defendant Detective J. Dreis is only mentioned specifically by name one other time, in paragraph 20 when Plaintiff alleges that this defendant "was responsible for [the] introduction of a false/alleged confession and evidence…." (Complaint ¶ 20).

However, Plaintiff's Complaint herein does not allege any civil rights violation against Defendant Detective J. Dreis based on a false confession. Rather, the crux of Plaintiff's claim for relief is based on his allegations that DNA evidence which might be useful to prove his innocence was improperly destroyed. The relief Plaintiff prays for, in part, is an order of this Court ordering a search for the missing DNA evidence, an order appointing counsel as this case is "far too complicated for plaintiff," and an investigation regarding the destruction of the DNA.

With regard to the civil rights allegation, Plaintiff request "[a]n injunction be issued stating that plaintiff's rights under the Fifth, Sixth, Eight [sic] and Fourteenth Amendments to the United States Constitution has been violated." (Complaint 24:21-23). Under these circumstances, an injunction is not an appropriate relief under the circumstances for the alleged claim for relief under Section 1983.

Accordingly, Plaintiff's Complaint fails to meet the pleading requirements of Fed. Rules of Civ. Proc. Rule 8 with regard to these answering defendants.

C. The San Diego Police Department is Not a "Person" for Purposes of a Section 1983 Action

Plaintiff brings suit not only against individual officers of the San Diego Police Department, but also the department itself. However, municipal departments, here the San Diego Police Department, is not an appropriate defendant. Under Section 1983, a "person" acting under color of law may be sued for violations of the U.S. Constitution or federal laws. The term "person" under Section 1983 encompasses state and local officials sued in their individual capacities, private individuals and entities which acted under color of state law, and local governmental entities. (*Vance v. County of Santa Clara* 928 F.Supp. 993, 995-996 (N.D.Cal.1996)). But "persons" do not include municipal departments. (*Id.*) "Naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality." (*Stump v. Gates* 777 F.Supp. 808, 816 (D.Colo.1991)).

The San Diego Police Department is a department of the municipality of the City of San Diego. Therefore, based on these legal precedents, the San Diego Police Department is not a properly named defendant in this action and should be dismissed.

D. Defendant Detective J. Dreis Cannot Be Held Vicariously Liable for the Action of Others

Plaintiff's purported causes of action are brought under 42 U.S.C. § 1983 and the Fifth, Sixth, Eighth and Fourteenth Amendments. (Complaint 24:21-23). In these causes of action, Plaintiff complains of the destruction of DNA evidence post conviction. Plaintiff alleges that his rights under the Fifth, Sixth, Eighth and Fourteenth Amendments were violated by refusing to search for and provide DNA evidence that previously existed which Plaintiff claims is necessary for him "to effectively litigate his claim he is innocent of crimes for which he is currently incarcerated…." (Complaint ¶ 91). However, in the twenty six pages of the Complaint, Plaintiff never alleges that Defendant Detective J. Dreis was a party to the alleged destruction of the DNA evidence. Rather, Defendant Detective J. Dreis is only mentioned specifically by name one other time, in paragraph 20 when Plaintiff alleges that this defendant "was responsible for [the] introduction of a false/alleged confession and evidence…." (Complaint ¶ 20). This allegation with regard to Detective J. Dreis bears no correlation to the gravamen of the Complaint – the destruction of DNA evidence.

With regard to the alleged destruction of DNA evidence, Plaintiff alleges as follows: "An order to destroy or release trial exhibits was issued by the Superior Court on August 6, 1987." (Complaint ¶ 25). "The evidence in the trial Court's possession was destroyed or otherwise disposed of in February 22, 1987." (*Id.*) However, there is no allegation that Defendant Detective J. Dreis was involved in the alleged destruction of the DNA evidence, much less had a duty to preserve the DNA evidence. Indeed, Plaintiff's Complaint lacks specificity as to the parties who had possession of the DNA evidence, who petitioned for the destruction order and who actually destroyed the DNA evidence. Ironically, undercutting Plaintiff's own allegations, Plaintiff alleges that his own attorney at the time investigated the propriety of the destruction of DNA evidence and concluded that "[o]ur investigation is now complete … it can not [sic] be shown that the evidence [sic] was wrongfully destroyed…" (Complaint ¶ 73).

Under the law, liability for a police officer's actions under Section 1983 are solely personal. (*Duisen v. Administrator and Staff, Fulton St, Hosp., No. 1, Futon, Mo.*, 332 F.Supp. 125 (W.D. Mo. 1971)). There is no *respondeat superior* liability for allegations of violations of Section 1983. (*Ellis v. Blum* 643 F.2d 68 (2d Cir. 1981)). In other words, another entity or person cannot be held vicariously liable under Section 1983 for the acts of individual persons. (*Monell v. New York City Dept. of Soc. Serv.*, 436 U.S. 658 (1978)). Thus, under the law, Defendant Detective J. Dreis cannot be held vicariously liable for the actions of another in a civil rights case.

In this case, Plaintiff has made no allegations that Defendant Detective J. Dreis was party to the alleged destruction of DNA evidence. Rather, the only way Defendant Detective J. Dreis appears to be connected to this matter is by the single allegation that "was responsible for [the] introduction of a false/alleged confession and evidence…." (Complaint ¶ 20). Thus, it appears that Plaintiff seeks to hold Defendant Detective J. Dreis responsible for the actions of others. However, under the law, Defendant Detective J. Dreis cannot be vicariously responsible for the alleged acts of others. Despite the clear legal authority, Plaintiff attempts to do what the law clearly states that he cannot, to wit, hold Defendant Detective J. Dreis vicariously liable for the alleged civil rights violations of other third parties. Accordingly, Plaintiff's claims for relief against Defendant Detective J. Dreis should be dismissed in their entirety.

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D. Plaintiff Has Failed to Meet the Pleading Requirements for a Section 1983 Claim Against Defendant Detective J. Dreis

To state a claim under Section 1983, a plaintiff must allege that the defendant, acting under the color of state law, deprived him/her of a right guaranteed to him/her under the Constitution or a federal statute. (*Karim-Panahi v. Los Angeles Police Dept.*, 839 F.2d 621, 623 (9th Cir. 1988)). "If the harm suffered by plaintiff is not more than the result of tortious conduct, an action under the civil rights act will not lie." (*Soto v. City of Sacramento*, 567 F. Supp. 662 (E.D. Cal. 1983); *Paul v. Davis*, 424 U.S. 693, 701 (1976); *Screws v. United States*, 325 U.S. 91, 109 (1945)). Specifically, a Section 1983 plaintiff must show that he has been deprived of a federally protected right by reason of that conduct. (*see Navarette v. Enomoto*, 536 F.2d 277 (9th Cir. 1976)).

Moreover, plaintiffs must plead and prove specific facts in order to prevail on a Section 1983 claim. (*Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977)). Vague and conclusive allegations are not sufficient to support a Section 1983 claim. (*Keniston v. Roberts*, 717 F.2d 1295, 1300 (9th Cir. 1983)). The purpose of Section 1983 was to create a "species of tort liability" which would compensate the actual injuries of one deprived of identifiable constitutional violations. (*Carey v. Piphus*, 435 U.S. 247, 263 (1978)). Thus, the initial inquiry is whether the plaintiffs allege an injury of constitutional dimensions. (*Baker v. McCollan*, 443 U.S. 137, 140 (1978)).

In this case, Plaintiff has made no allegations that Defendant Detective J. Dreis was party to the alleged destruction of DNA evidence, the basis of his civil rights claim. Rather, the only way Defendant Detective J. Dreis appears to be connected to this matter is by the single allegation that "was responsible for [the] introduction of a false/alleged confession and evidence was from detectives A. Fragoso and J. Dreis." (Complaint ¶ 20). Accordingly, Plaintiff has not pled any facts to support an injury of constitutional dimensions, and therefore, has not met the pleading requirements for a cause of action under 42 U.S.C. § 1983. Thus, with regard to Defendant Detective J. Dreis, Plaintiff has wholly failed to plead a valid Section 1983 claim, and thus, as to him, the claim for relief in which they are named should be dismissed.

E. Defendant Detective J. Dreis Did Not Violate Plaintiff's Fifth, Sixth, Eighth and Fourteenth Amendment Rights

Plaintiff claims that his constitutional rights granted via the Fifth, Sixth, Eighth and Fourteenth Amendments were violated. As to Defendant Detective J. Dreis, based on the above, the Fifth, Sixth and Eighth Amendments are clearly not applicable. With regard to the Fourteenth Amendment, based on the above, Plaintiff has not alleged any facts which show how Defendant Detective J. Dreis allegedly violated either the equal protection or due process rights granted to Plaintiff under the Fourteenth Amendment. Accordingly, Plaintiff has failed to state a valid Section 1983 claim for relief.

III.

LEAVE TO AMEND

A court may dismiss a complaint without granting leave to amend only if it appears with certainty that the plaintiff cannot state a claim and any amendment would be futile. (Fed. R. Civ. P. Rule 15(a), stating that leave to amend "shall be freely given when justice so requires;" *DeSoto v. Yellow Freight Systems, Inc.* 957 F.2d 655, 658 (9th Cir. 1992); *Schreiber Distrib. Co. v. Serv-Well Furniture Co.*, 806 F.3d 1393, 1401 (9th Cir. 1986), stating, "leave to amend should be granted unless the court determines that the allegation of other facts consistent with the challenged pleading could not possibly cure the deficiency.")

In this case, Plaintiff is attempting to allege a claim for relief based on the alleged improper destruction of DNA evidence. There are no facts pled in this instant Complaint and no facts that could be pled in an amended complaint showing how Defendant Detective J. Dreis had a duty to preserve DNA evidence and breached that duty when he improperly destroyed said DNA evidence. Accordingly, Defendant Detective J. Dreis requests that leave to amend should not be granted.

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IV.

CONCLUSION

Plaintiff's Complaint is wholly inadequate to state a claim for relief under Section 1983. For the foregoing reasons, Defendants Detective J. Dreis and the San Diego Police Department respectfully requests that its motion to dismiss be granted and leave to amend not be granted.

Dated: June 13, 2008

MICHAEL J. AGUIRRE, City Attorney

By /s/ Walter C. Chung
Walter C. Chung
Deputy City Attorney
Attorneys for Defendants Detective J. Dreis
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